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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 579

UNITED STATES LINES OPERATIONS, INC.,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

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INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Jurisdiction	2
Statute involved	2
Decision of the court below	2
Question presented	2
Statement	2
Specification of errors to be urged	5
Reasons for granting the writ	5

Cases Cited.

United States v. *Esnault-Pelterie*, 299 U. S. 201, 57 Sup. Ct. 159	7
United States v. *Pyne*, 313 U. S. 127, 61 Sup. Ct. 895	7

Statutes Cited.

Act of February 13, 1925, Section 3(b), as amended by the Act of May 22, 1939, c. 140, 53 Stat. 752	2
Act of March 2, 1929 (Public—No. 952—70th Cong.), 45 Stat. 1508, amended April 19, 1930 (Public—No. 155—71st Cong.), 46 Stat. 225	2, 3

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays for the issuance of a writ of certiorari to review a judgment of the Court of Claims of the United States entered June 8, 1943, insofar as said judgment dismisses the petition of plaintiff below involving claim for compensation for sea transportation of so-called Gold Star Mothers and Widows to Europe and return in 1930. The judgment of the Court entered at the same time in the Government's favor on its counterclaim for rent of office space in 1932 has been paid and accepted by the Department of Justice, and there has been no further controversy with respect thereto since judgment was entered and paid.

Motion of plaintiff below for a new trial with respect to the Gold Star case was filed August 6, 1943, and was denied by the Court of Claims October 4, 1943 (R. 73).

Jurisdiction.

The Jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939, c. 140, 53 Stat. 752.

Statute Involved.

The Statute involved is the Act of March 2, 1929 (Public, No. 952, 70th Cong.), 45 Stat. 1508, amended April 19, 1930 (Public, No. 155, 71st Cong.), 46 Stat. 225.

Decision of the Court Below.

The opinion of the Court below has not been printed in the official reports. The Court made special findings of fact, conclusions of law, opinion and judgment with respect to the claim for compensation for sea transportation of the Gold Star Mothers and Widows. These are found in the Record on pages 24 to 73.

The order of the Court denying motion for a new trial with respect to the Gold Star case is found on page 73 of the transcript.

Question Presented.

Whether the Court of Claims may properly hold as a matter of law that the respondent, having entered into a specific contract with petitioner for the transportation of passengers at tariff rates, is entitled to certain discounts not mentioned in the contract, and not available to any passengers under the applicable tariff rates.

Statement.

On March 2, 1929, there was approved an Act of Congress to "enable the mothers and widows of the deceased soldiers,

sailors and marines of the American forces now interred in the cemeteries of Europe to make a pilgrimage to these cemeteries" (45 Stat. 1508). The act was amended April 19, 1930 (46 Stat. 225).

The Quartermaster General of the Army, under the authority of the Secretary of War, arranged for the pilgrimage authorized by the Act and negotiated with plaintiff for the sea transportation of the pilgrims from Hoboken to Europe and return on specially arranged schedules involving the operation of 17 sailings east-bound and a like number of sailings west-bound on specified sailing and arrival dates during the calendar year 1930. Due to limitation of two weeks for the tour in Europe certain schedules had to be and were changed and adjusted. These negotiations culminated in acceptance by the Quartermaster General of a proposal dated March 29, 1930, in which plaintiff agreed to "provide cabin accommodations in the number and on the vessels indicated on the attached list at tariff rates for the accommodations occupied east- and west-bound", for which payment was to be made by Government transportation order "to be issued when east- and west-bound tickets for each sailing are made up" by plaintiff's representatives and turned over to representative of the Quartermaster General (Findings 17 and 18, R. 43-48).

The tariff rates referred to in the proposal were published in a folder dated January 1, 1930, and quoted "off-season" rates effective east-bound July 16 to May 15, inclusive, and west-bound Oct. 1 to July 31 inclusive; and the summer, or "high" season, rates effective May 16 to July 15, and west-bound August 1 to September 30 inclusive. The "off-season" one-way rates were lower than the high season, and in addition, the folder provided that—"Round trip rates apply during 'off-season'—East-bound July 16 to May 15, inclusive; West-bound Oct. 1 to July 31 inclusive, Round trip rates for berths above minimum are made by deducting

12% from combined Eastbound and Westbound fares" (Court's Findings 25, R. 52).

The first two parties sailed eastbound in off-season May 7th and May 13th respectively, and returned westbound in off-season, May 29th and June 4th and 5th, respectively, these being the only two round-trips in "off season". The third to seventeenth parties traveled one-way in "off-season" and one-way in high season (Court's Finding 37, R. 66).

Petitioner's bills at full face one-way tariff fares for the particular season in which the sailing east- or west-bound occurred were "certified correct for the War Department, R. E. Shannon, Captain, Quartermaster Corps," and were paid by the Finance Officer of the War Department without question from May 7 to July 23, 1930, at full face amount of one way tariff rates eastbound and westbound. On July 23, 1930, the Finance Officer of the War Department sent plaintiff a written request that the per capita fare shown on vouchers submitted be corrected to a basis of 12 per cent discount in accordance with tariff, to which plaintiff immediately protested and refused to acquiesce in the requested change of its bills theretofore approved and paid or to change the basis of any of the future bills for the remaining pilgrimages (Court's Findings 31, 32, 33; R. 56-64).

The Finance Officer withheld settlement of plaintiff's bills for the sixteenth pilgrimage sailing eastbound August 27th and westbound September 18th until October 27, 1930, when a deduction was made representing 12% discount on combined one-way fares for the first two pilgrimages and also a deduction representing 12% of one-way portions of "off-season" fares on remaining pilgrimages (Court's Finding 37, R. 66).

Specifications of Errors To Be Urged.

The Court of Claims erred:

1. In holding that petitioner's 1930 tariff, which specifically cancelled all previous issues, was consistent with the round-trip one-way discount provision of the 1929 tariff.

2. In holding that under the applicable rate the respondent was entitled to a 12% discount on the one-way portion of fares for trips in off-season by those pilgrims who travelled one-way in off-season and one-way in high-season.

3. In holding that the petitioner was not entitled to recover the sum of $59,954.46 representing a deduction of 12 per cent of one-way off-season travel.

Reasons for Granting the Writ.

Petitioner's tariff rates for 1930 did not provide for any discount on one-way off-season travel where the other portion of the round trip was not in off-season.

It is respectfully submitted that the one-way discount formula effective in 1929 cannot be applied in 1930 where the 1930 tariff specifically revokes all provisions of the 1929 tariff.

The Court has also correctly found that the "tariff rates" referred to in the accepted proposal of March 29, 1930, were published in a folder dated January 1, 1930, which is in evidence and made a part of Finding 25 by reference thereto. The Court further finds that said tariff quoted off-season rates effective eastbound July 16 to May 15, inclusive, and westbound Oct. 1 to July 31 inclusive, and summer or "high season" rates effective eastbound May 16 to July 15 inclusive and westbound August 1 to September 30 inclusive; that the off-season rates set forth in the tariff

were lower than the high season rates; and that as to off-season rates the folder provided:

> "Round trip rates apply during 'off-season'—Eastbound July 16th to May 15th inclusive; Westbound Oct. 1st to July 31st inclusive. Round trip rate for berths above minimum is made by deducting 12% from Combined Eastbound and Westbound fares."

On the findings as to the agreement and applicable tariff it is submitted that under the language of the agreement and the applicable tariff a deduction of 12 per cent on one-way trips in "off-season" should not have been allowed, and that the Court of Claims had no basis for holding as a matter of law that a one-way discount provision effective in 1929 was applicable or effective under the agreement or the 1930 tariff.

The Court finds that the agreement was uniformly applied by petitioner and respondent as meaning tariff rates eastbound and tariff rates westbound, without any deduction of 12 per cent on any round-trip or one-way trip in "off-season" from May 7 to July 23, 1930, when respondent's Finance Officer requested petitioner to correct vouchers to a basis of 12 per cent discount in accordance with tariff.

Petitioner is no longer questioning the judgment of the Court of Claims that the respondent was entitled to the round-trip discount on combined one-way fares on the only two round-trips which were made both ways in "off-season." The writ of certiorari is directed to the sole issue of whether the respondent was entitled to the one-way discount taken by the respondent on those trips which were made one-way in off-season and where the other portion of the round-trip was not in "off-season."

Every finding of the Court of Claims leads inevitably to the ultimate facts shown in Finding 25 and in Minutes

174 and 175 of Meeting No. 24 on November 22, 1929 (shown in the latter part of Finding 26) that round-trip discount was applicable only to round-trips made in off-season, and that the provision of the minutes of Meeting No. 4 on March 28, 1929, offered "as a trial" a discount where "passenger travels one-way during off-season and one-way during the summer season" the reduction would be allowed on the off-season one-way fare, was not included in the 1930 tariff.

The conclusion of the Court that the discount taken by the respondent is consistent with the discount provision of the 1930 and the conference Agreement is absolutely devoid of any supported finding insofar as the discount taken related to one-way discounts on off-season travel and this Court has held in numerous cases that a judgment of the Court of Claims cannot be supported by that Court's statements or conclusions of law except upon adequate findings. *U. S.* v. *Esnault-Pelterie*, 299 U. S. 201, 206, 57 S. Ct. 159, 162; *U. S.* v. *Pyne*, 313 U. S. 127, 131, 61 S. Ct. 895.

The Court of Claims does not undertake in its opinion to show the basis of its conclusion that the one way discount is allowable. It refers to the agreement, the tariff and the passenger conference minutes and justifies as a conclusion of law, both the discount taken on round-trips, i. e. 12 per cent of the *combined one-way fares* on the only two round trips which were made in off-season, as well as the *one-way discount*, notwithstanding the finding shows that respondent's proposal containing offer of one-way discount in 1929 was rejected, was not renewed, and tariff for 1930 authorized only round-trip discounts where both directions of travel were in off-season.

Negotiations for the subject transportation to be performed in 1930 began with a letter from petitioner to the respondent in June 1929 in which plaintiff offered discount

of 10 per cent on one-way "off-season" travel, i. e. if the travel is one way in "off-season" and one way in high season a "10 percent deduction is applicable on one-half of the fare." To this proposal respondent replied that the Government was not then in position to make definite plans or arrangements for the necessary transportation; that definite plans could not be formulated until the size of the movement was known, which would be about November 15, 1929 (Court's Findings 4 and 5, R. 44).

That the one-way discount was not applicable in the 1930 tariff is demonstrated not only by the specific language of the tariff but by the minutes of the Trans-Atlantic Passenger Conference (of which respondent was a member). The minutes of meetings as filed in the Department of Commerce Shipping Board Bureau, and made a part of the Court's Finding 26 (R. 53-4) show that the conference, effective March 25, 1929 instituted, "as a trial" cabin round trip rates "with a reduction of 10% from the combined one-way fares for travel during" certain definitely named periods east-bound and west-bound; that if round trip ticket is issued at the outset and passenger travels one way during the "off-season" and one way during the summer season, the reduction of 10% would be allowed on the off-season one-way fare; that a line may advertise that the reduction will be allowed on the off-season one-way fare, even if the passenger travels one-way during the summer season; that the subject was to be reviewed at the meeting of the principals in October 1929.

The later passenger conference minutes (Minutes 174 and 175; Finding 26, R. 53-4) show that the subject of round-trip discount was considered at meeting held November 22, 1929, wherein it was provided that effective January 1, 1930, there was to be no reduction eastbound or westbound in the summer or high season. Specifically,

the minutes show that seasonal periods and rates applicable for cabin round trips would be as follows:

Off Season

12 percent off combined one-way rates

Westbound	*Eastbound*
October to July	July 16 to May 15

Summer Season

No reduction

Westbound	*Eastbound*
August to September	May 16 to July 15

It is therefore clear that the conclusion of law of the Court of Claims in its opinion that the Government was entitled to a discount on travel one-way in off-season where the travel in the other direction was in high-season is not supported by the findings. Such a conclusion is in direct conflict with the tariff provision which says "round-trip rates apply in off-season" and "round trip rates are made by deducting 12 per cent from combined Eastbound and Westbound fares." There is no authorization for a deduction of 12 per cent from a one-way off-season fare, especially as the one-way off-season fare as shown in the tariff is at a lower rate than the one-way high season fare. The Government received the benefit of the lower rate in off-season one-way fares under petitioner's bills and after those bills had been paid as rendered the Government then asserted an alleged claim to an additional favor of a 12 per cent discount off the already lower off-season rate.

In conclusion, it is respectfully submitted that the findings of the Court of Claims do not support the conclusions of law found by that court with respect to the alleged claim of discount on one way off-season travel where the

other portion of the round trip was not made in the off-season. The opinion of the Court and the conclusions of law contained therein are hopelessly in conflict with the findings of fact.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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